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**IN THE  
COURT OF APPEALS OF INDIANA**

RODNEY L. MERRITT,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

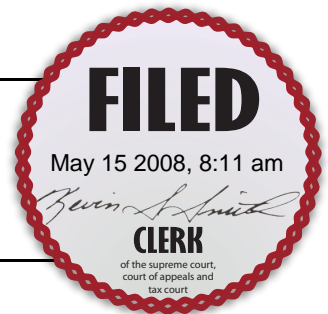
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No. 82A01-0708-CR-380

APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Scott R. Bowers, Judge  
Cause No. 82D02-0611-FA-948

**May 15, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Rodney L. Merritt appeals his conviction for Class A felony dealing in methamphetamine. Specifically, he contends that the trial court erred in denying his motion for judgment on the evidence. Because the evidence is sufficient to prove that Merritt constructively possessed the methamphetamine, we affirm.

## **Facts and Procedural History**

On November 7, 2006, Shannon Bland (“Bland”) text messaged Merritt, whom he had known for a couple of years, that he needed to speak with him. Bland received a response to come over to Shannon King’s (“King”) house. King lived at 1325 North Harlan in Evansville, Indiana. Bland brought 200 pseudoephedrine pills with him that he wanted to exchange for either \$200 or methamphetamine. When Bland arrived at 1325 North Harlan, King answered the door and told him that Merritt was in the shower. King told Bland to come in and said that she had what he wanted. Two other people were inside the house smoking methamphetamine at the kitchen table. Bland told King that he wanted to wait for Merritt but that he could not stay long. Bland put the pseudoephedrine pills on the kitchen table, and King picked them up. King then went to another room, returned with a bag of methamphetamine, and put the bag on the kitchen table. Bland picked up the bag of methamphetamine. At that point, Merritt emerged from the shower. Bland said that he had to go and left.

As Bland was leaving King’s house, Officer John Matthews from the Evansville Police Department followed him. Officer Matthews had been conducting surveillance on 1325 North Harlan for approximately one month. When Bland began following another

car too closely, Officer Matthews pulled him over. Officer Matthews searched Bland's car and found methamphetamine and empty pseudoephedrine blister packs. Officer Matthews then began the process of securing a search warrant for 1325 North Harlan.

Approximately two hours later, Officer Matthews, Officer John Townsend, and other officers went to 1325 North Harlan to execute the search warrant. As the officers approached the front door, someone inside the house saw them. The officers announced that they had a search warrant and made a forced entry into the house. The officers proceeded directly to the kitchen. The officers found Merritt and King in a hallway off the kitchen and secured them. A juvenile, King's brother, was also found inside the house. Officer Matthews began searching the kitchen. On the kitchen table he found a zippered bag, which contained eight zip lock baggies of a white and brown powdery substance. The substance from three of the baggies was tested and determined to be 18.03 grams of methamphetamine. Officer Matthews found another zippered bag next to the table containing pseudoephedrine pills as well as a prescription bottle bearing Merritt's name. The officers also found numerous other items in the house, including surveillance cameras, coffee filters, empty blister packs, a digital scale, test tubes, a torch, and denatured alcohol. When Merritt was taken into custody, he looked directly at Officers Matthews and Townsend and said, "I just want to let you guys know everything in here is all mine. This is all mine." Tr. p. 35. According to Officer Townsend, it is common both for people involved in the sale of illegal drugs to protect their locations by video surveillance and for drug dealers to deal out of a location other than their homes.

The State charged Merritt with Class A felony dealing in methamphetamine (possession with intent to deliver) and Class D felony possession of pseudoephedrine. Following a jury trial, Merritt was found guilty of both counts. The trial court sentenced Merritt to thirty-five years for dealing in methamphetamine and eighteen months for possession of pseudoephedrine, to be served concurrently. Merritt now appeals his dealing in methamphetamine conviction only.

### **Discussion and Decision**

Merritt contends that the trial court erred in denying his motion for judgment on the evidence that he made at the close of all the evidence. A motion for judgment on the evidence should be granted only if there is a total lack of evidence as to the guilt of the accused or where there is no conflict in the evidence and it is susceptible only to an inference in favor of the accused. *Wilcox v. State*, 664 N.E.2d 379, 382 (Ind. Ct. App. 1996). A motion for judgment on the evidence will not be granted if the State presented a *prima facie* case. *Id.* Upon review, we look at the denial of a motion for judgment on the evidence as we do all challenges to the sufficiency of the evidence, and we neither reweigh evidence nor judge witness credibility. *Id.*; *see also Hardister v. State*, 849 N.E.2d 563, 573 (Ind. 2006).

Specifically, Merritt argues that the evidence is insufficient to prove that he constructively possessed the methamphetamine that was found on the kitchen table at King's house. Evidence of constructive possession is sufficient if the State shows that the defendant had both the capability and the intent to maintain dominion and control over the contraband. *Hardister*, 849 N.E.2d at 573. The capability requirement is met

when the State shows that the defendant is able to reduce the controlled substance to the defendant's personal possession. *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999). Although Merritt did not live at 1325 North Harlan, he did spend a considerable amount of time there. Officer Matthews testified that when he was conducting surveillance on this house, he saw Merritt's car there approximately 80-90% of the time. In addition, when the officers forced entry into the house, Merritt was found in the hallway right off the kitchen, and the methamphetamine was found on the kitchen table, near a bag containing a prescription bottle in his name. The evidence is sufficient to prove that Merritt was able to reduce the methamphetamine to his personal possession.

As for intent, when a person's control over the premises where contraband is found is non-exclusive, intent to maintain dominion and control may be inferred from additional circumstances that indicate that the person knew of the presence of the contraband. *Hardister*, 849 N.E.2d at 574. Additional circumstances may include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs or weapons; (5) drugs or weapons in plain view; and (6) location of the drugs or weapons in close proximity to items owned by the defendant. *Id.* Here, the evidence shows that the officers found a zippered bag containing eighteen grams of methamphetamine on the kitchen table. The officers found another zippered bag next to the table containing pseudoephedrine pills as well as a prescription bottle bearing Merritt's name. Thus, the drugs were in close proximity to an item owned by Merritt. In addition, as Merritt was being taken into custody, he looked directly at Officers Matthews and Townsend and

said, “I just want to let you guys know everything in here is all mine. This is all mine.” Tr. p. 35. Although Merritt argues on appeal that his statement is too generic and is therefore meaningless, the jury could have reasonably inferred that Merritt knew perfectly well why the police were there and was forthrightly telling them what they were going to find was his. The evidence is sufficient to show that Merritt had the intent to maintain dominion and control over the methamphetamine. As such, the evidence is sufficient to prove that Merritt constructively possessed the methamphetamine.<sup>1</sup> Accordingly, the trial court properly denied Merritt’s motion for judgment on the evidence, and we affirm his conviction for dealing in methamphetamine.

Affirmed.

MAY, J., and MATHIAS, J., concur.

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<sup>1</sup> In light of this conclusion, we do not address Merritt’s argument that the evidence is insufficient to prove that Merritt aided King in her drug activities.